

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

JACOB BEVEL, )  
Plaintiff, )  
vs. ) Case No. CIV-05-1362-M  
GARFIELD COUNTY SHERIFF'S )  
DEPARTMENT, et al., )  
Defendants. )

## **REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing pro se, has filed this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the matter be dismissed for failure to pay the initial partial filing fee.

By order of this Court dated November 23, 2005, Plaintiff was ordered to pay an initial partial filing fee in the amount of \$5.50 on or before December 13, 2005, in accordance with the provisions of 28 U.S.C. § 1915(b). Plaintiff was advised that failure to pay the initial partial filing fee or to show cause in writing for his failure to pay could result in dismissal of this action without prejudice to refiling.

A review of the court file reveals that Plaintiff has not paid the initial partial filing fee, requested an extension of time within which to pay, or demonstrated good cause for his failure to do so. Thus, Plaintiff's claims are subject to dismissal without prejudice to refiling. Local Civil Rule 3.4(b); *Lucky v. Hargett*, No. 97-6161, 1997 WL 603780 (10<sup>th</sup> Cir.

Oct. 1, 1997) (upholding dismissal of Section 1983 claim for failure to pay initial partial filing fee); *Amen v. United States*, No. 96-5146, 1997 WL 158163 (10<sup>th</sup> Cir. April 1, 1997) (district court should have dismissed the complaint without prejudice when the plaintiff failed to pay the filing fee).<sup>1</sup>

**RECOMMENDATION**

Accordingly, it is recommended that this matter be dismissed without prejudice to refiling. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by the 12<sup>th</sup> day of January, 2006, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10<sup>th</sup> Cir. 1991). This Report and Recommendation disposes of the issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** this 23<sup>rd</sup> day of December, 2005.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>These unpublished dispositions are cited as persuasive authority pursuant to Tenth Circuit Rule 36.3.